

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 M) and the City of Orinda for
Authorization Under Public Utilities Code
Section 851 to Quitclaim a Portion of a 115 kV
Transmission Line Easement.

Application 05-06-002
(Filed June 1, 2005)

OPINION GRANTING THE APPLICATION**I. Introduction**

Pacific Gas and Electric Company (PG&E) and the City of Orinda (City) request an order authorizing PG&E pursuant to § 851¹ of the Public Utilities Code to quitclaim a portion of an existing 115 kilovolt (kV) transmission line easement to the City, which will allow the City to develop and construct new administrative offices and corresponding site improvements (Project). PG&E and the City also request a finding that the Project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA). Finally, PG&E and the City request expedited consideration and approval of this application.

II. Description of the Project

PG&E and the City seek authority for PG&E to quitclaim what is currently part of its Sobrante-Moraga 115 kV transmission line tower easement, located at 18 Orinda Way in the City of Orinda. PG&E's quitclaim of a portion of the

¹ Unless otherwise noted, all statutory references are to the Public Utilities Code.

easement will allow the City to construct new administrative offices and to develop corresponding site improvements. The Project includes a 13,600 square foot office building and 42 parking spaces.

The City is expected to open bids on its Project on June 14, 2005, and the City has notified PG&E that its funding authority for the Project will not approve funding until all easement issues have been resolved. As a result, the City will be unable to proceed with the award and contract until the Commission approves the easement quitclaim. Therefore, PG&E and the City request expedited review and approval of the proposed transaction.

III. The Proposed Transaction is in the Public Interest

The proposed transaction is consistent with PG&E's provision of utility service and the underlying purpose of § 851. As we recently said, the main issue in § 851 proceedings is whether the proposed transaction is in the public interest: "The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers." (Decision (D.) 02-01-058, 2002 Cal. PUC LEXIS 11, *9.)

PG&E has determined that the easement area to be quitclaimed is no longer necessary or useful to PG&E in the performance of its duties to the public and will not interfere in any way with the operation of PG&E's facilities, or with the provision of service to PG&E's customers. Consistent with the building setback requirements established by local zoning regulations, the City's proposed building site would be in excess of 50 feet from PG&E's transmission lines. Further, the proposed parking lot would provide maintenance access to the base of PG&E's transmission tower, where no such access currently exists.

The parties assert that approval of the proposed transaction will serve the public interest in at least two important ways. First, the Project provides

beneficial public use of a site in the City's downtown area that would otherwise remain vacant and underutilized. Second, it will allow the City to develop a parcel as affordable senior housing. Therefore, Commission approval of the proposed transaction will allow the City to meet a desperate need that exists both in Orinda and in the general San Francisco area.

IV. CEQA Review is Not Needed

Because the Project is categorically exempt from CEQA under Section 15332 of the CEQA Guidelines (14 Cal. Code Regs., §§ 15000, *et seq.*) and because the Project has been found categorically exempt by the project's lead agency, the City of Orinda, we need not initiate an independent CEQA review of the Project.

The CEQA Guidelines include a list of categories of projects that have been determined not to have a significant effect on the environment and that are therefore exempt from the provisions of CEQA. (CEQA Guidelines, §§ 15300, *et seq.*) Construction of new administrative offices and corresponding site improvements is characterized as an in-fill development project and is therefore exempt from the provisions of CEQA under Section 15332 of the CEQA Guidelines. Section 15332 is intended to promote in-fill development within urbanized areas. The class consists of environmentally benign in-fill projects which are consistent with local general plan and zoning requirements.

Under this exemption, in-fill development is exempt from CEQA review if it meets the following conditions:

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

- c.) The project site has no value as habitat for endangered, rare or threatened species.
- d.) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e.) The site can be adequately served by all required utilities and public services.

The CEQA Guidelines set out rules concerning which entity will act as the lead agency under CEQA when more than one public agency will issue discretionary permits for a project. (*See* CEQA Guidelines, § 15051.) All other agencies with discretionary approval over the project are “responsible agencies.” (*Id.*, § 15381.) In accordance with those rules, the City of Orinda as the agency carrying out the overall project is the lead agency in this case, and the Commission is the responsible agency. In October 2004, the City of Orinda found the Project categorically exempt from provisions of CEQA.

V. Description of the Property Involved

A map of the easement and proposed quitclaim has been filed with the Commission. Under the proposed transaction, the City will obtain the use of a portion of PG&E’s easement corridor for the Project, but only to the extent such use is compatible with PG&E’s provision of utility service.

PG&E’s Sobrante-Moraga 115 kV transmission line is located within a 130-foot-wide easement corridor established by two adjoining, parallel easements granted to PG&E. The first easement consists of a 100-foot wide strip of land that was granted to PG&E by the East Bay Water Company in 1922. The second easement consists of a 30-foot wide strip that was granted to PG&E by the

East Bay Municipal Utility District in 1947.²

By the City Council Resolution, the First Church of Christ, Scientist, Orinda California (Church) and the City entered into an agreement for the City to purchase a portion of the Church's land at No. 22 Orinda Way where the City proposes to construct the new office building. Pursuant to a grant deed executed on February 22, 2005, the City is the current owner of the land now referred to as No. 18 Orinda Way, Orinda, Contra Costa County, California. A copy of the grant deed, together with all easements, rights and privileges appurtenant to the property now known as 18 Orinda Way, Orinda, California has been filed with the Commission. To accommodate the City's request to use a portion of PG&E's transmission tower easement for the Project, PG&E seeks to quitclaim to the City a portion of its easement rights located on 18 Orinda Way.

VI. Category and Need for Hearings

In Resolution ALJ-176-3154, dated June 16, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary; these determinations will not be altered.

VIII. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311 (g)(2) of the Public Utilities

² PG&E is quitclaiming this second easement in its entirety, but is not requesting Commission authority to do so, on the grounds that this easement is vacant and has never been used to serve utility customers, and has never been recorded in ratebase; therefore, the easement is not subject to § 851. PG&E reserved the easement in anticipation of needing it for a second planned transmission line, but PG&E subsequently concluded that the easement was not needed.

Code, the otherwise applicable 30-day period for public review and comment is waived.

IX. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E and the City seek authority for PG&E to quitclaim to the City what is currently part of its Sobrante-Moraga 115 kV transmission line tower easement, located at 18 Orinda Way in the City of Orinda. PG&E's quitclaim of a portion of the easement will allow the City to construct new administrative offices and develop corresponding site improvements.

2. The proposed transaction will serve the public interest in at least two ways: First, the Project provides beneficial public use of a site in the City's downtown area that would otherwise remain vacant and underutilized. Second, it will allow the City to develop a parcel as affordable senior housing.

3. Approval of the proposed transaction will allow the City to meet a need that exists in Orinda.

4. The easement to be quitclaimed which is the subject of this application is no longer necessary or useful to PG&E in the performance of its duties to the public and will not interfere in any way with the operation of PG&E's facilities, or with the provision of service to PG&E's customers.

5. The Project has been found categorically exempt by the project's lead agency, the City of Orinda; therefore, we need not initiate an independent CEQA review of the Project.

6. The Project is an environmentally benign in-fill project which is consistent with local general plan and zoning requirements.

Conclusions of Law

1. The proposed quitclaim is in the public interest.
2. The Project is categorically exempt from the provisions of CEQA.
3. The proposed quitclaim does not require further CEQA review by the Commission.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company may quitclaim a portion of an existing 115 kilovolt transmission line easement to the City of Orinda. The quitclaim deed shall be in the form attached as Exhibit E to the Application.
2. The authority granted herein shall expire if not exercised within one year of the date of this order.
3. Application 05-06-002 is closed.

This order is effective today.

Dated _____, at San Francisco, California.